

# California Department of Forestry and Fire Protection

## **Report to the Board of Forestry and Fire Protection on Recently Adopted Rules and Potential Changes to Existing Forest Practice Rules**



THE VALLEY FIRE

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## **Introduction**

The California Department of Forestry and Fire Protection (CAL FIRE) presents this report to the Board of Forestry and Fire Protection (Board) in response to the procedures outlined in the memo entitled, *Board Procedure for the Review of Forest Practice Rule Modifications* (October 4, 2006). The memo states that CAL FIRE will make a presentation to the Board at the regularly scheduled November meeting regarding the following:

- Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
- Issues encountered with achieving compliance with the regulatory standard of the Forest Practice Rules (rules), including potential solutions.
- Suggested regulatory modifications that would either 1) clarify existing rule language to better achieve the intended resource protection or 2) reduce the regulatory burden on the public and maintain the same level of protection.

In an effort to provide the Board with the above-requested information, CAL FIRE has queried plan review and field staff regarding implementation of recently adopted rules and any other area of the rules that has presented difficulty in implementation or interpretation.

For the most part, specific line-by-line revisions to a given rule are not contained in this report. Furthermore, CAL FIRE continues to work with the Board through various committees, subcommittees, and task groups to develop alternatives to the existing regulations. CAL FIRE hopes that the Board will consider current and previous work done in these committees. CAL FIRE can provide specific recommended changes to the Board as the rule review process moves forward.

This report presents information related to the following:

- Recently implemented rules, including legislation.
- Suggested non-substantive corrections.
- Rule-related issues from CAL FIRE's past reports.

## **Recently Implemented Rules During 2015**

There were five (5) rule packages that were implemented in 2015, as well as Technical Rule Addendum (TRA) #5 in support of the new Road Rules, adopted by the Board that took effect on January 1, 2015. Additionally the Office of Administrative LAW (OAL) has approved certain non-substantive changes (minor edits) that have been included in the 2015 Forest Practice Rules.

### **Road Rule, 2013**

14 CCR §§ 895.1, 914.7 [934.7, 954.7], 914.8 [934.8, 954.8], 915.1 915.1 [935.1, 955.1], 916.3 [936.3, 956.3], 916.4 [936.4, 956.4], 916.9 [936.9, 956.9], 918.3 [938.3, 958.3], 923 [943, 963], 923.1 [943.1, 963.1], 923.2 [943.2, 963.2], 923.3 [943.3, 963.3], 923.4 [943.4, 963.4], 923.5 [943.5, 963.5], 923.6 [943.6, 963.6], 923.7 [943.7, 963.7], 923.8 [943.8, 963.8], 923.9 [943.9, 963.9], 923.9.1 [943.9.1, 963.9.1], 1034, 1051.1, 1090.5, 1090.7, 1092.09, 1093.2, 1104.1

The Board adopted this extensive regulation for the revisions of Title 14 California Code of Regulations (CCR) Subchapters 4, 5 and 6, Article 12 [Article Northern] for Logging Roads, Landings, and Logging Road Watercourse Crossings.

Rule implementation comments include:

- There has been some concern regarding the interpretation and implementation of 14 CCR § 923.4 (I) that states “Construction or reconstruction of logging roads or landings shall not take place during the winter period unless the approved plan incorporates a complete winter period operating plan pursuant to 14 CCR § 914.7 [934.7, 954.7] that specifically addresses such logging road or landing construction or reconstruction.” Although this regulation specifies a complete winter period operating plan, which is addressed under 14 CCR §§ 914.7(b) [934.7(b), 954.7(b)], the new Road Rules also provided language under 14 CCR §§ 914.7(c) [934.7(c), 954.7(c)] for an in-lieu of a winter operating plan that allows construction of logging roads, and landings. Since 14 CCR §§ 923.4 [933.4, 953.4] (I) only references the entire Section, and not subsections, The Department has interpreted this rule to include the use of the in-lieu option.
- Similarly, it is not clear how these rules apply to operations under an emergency notice in regard to in-lieu operations, exceptions or the ability to operate under a winter period operating plan.
- There is a concern that construction and/or reconstruction of roads or landings within a Watercourse and Lake Protection Zone (WLPZ) is no longer an in-lieu practice by removing such references from 14 CCR § 916.3 [936.3, 956.3] (c). Although 14 CCR § 923.1 [943.1, 963.1] restricts construction and reconstruction within a WLPZ, an exception may be proposed as per 14 CCR § 923 [943, 963] (c) and the standards of in-lieu practices describe under 14 CCR § 916.1 [936.1, 956.1] do not apply.

- The Appurtenant Road definition indicates appurtenant roads are only roads that are used for log hauling and do not include other roads where incidental timber operations are conducted such as used to access drafting locations and rock pits. As a result, this presents an enforcement discrepancy for roads that will not be used for log hauling.

### **Board of Forestry Technical Rule Addendum No. 5**

Technical Rule Addendum No. 5 is located in the 2015 California Forest Practice Rules Book following 14 CCR §§ 923.9.1 [943.9.1, 963.9.1].

Rule implementation comments include:

- There has been positive reaction for the inclusion of Technical Rule Addendum No. 5 in regard to providing reference for achieving hydrologic disconnection through the planning and design of forest road drainage to minimize diversion potential and identify high risk watercourse crossings.

### **Modified Timber Harvesting Plan Amendments, 2013**

14 CCR § 1051

This rule package expanded the use of the Modified THP by increasing the allowable acreage and the extent of operations for harvesting timber under this harvesting option.

- There have been no Modified Timber Harvesting Plans (THPs) submitted in 2015 that utilized the increased allowable size of a Modified THP from 100 to 160 acres.

### **Emergency Notice – Native American Notification Amendments, 2014**

14 CCR §§ 895.1, 929.1, [949.1, 969.1], 1052

This rule package requires notification of Native Americans prior to the submission of an emergency notice for the salvage of timber; providing seven (7) days notification prior to the submittal of the notice to identify potential significant archaeological site within the operational area.

- There have been no signification problems with the implementation of this regulation. In regard to the requirement of 14 CCR §§ 929.1, [949.1, 969.1] (c) (3) to include an example of the notification letter; the Review Team was assured that proper notification was followed.

### **Slash Treatment Amendments, 2014**

14 CCR §§ 917.2, [937.2, 957.2]

This rule package provided an additional year to burn piled slash created on or after September 1 of any given year.

- There is no indication from the Unit Foresters at this time that the revised rule created an increase fire risk or an issue in regards to enforcement.

### **Forest Fire Prevention Pilot Project Exemption, 2014**

14 CCR §§ 1038(e), 1038.2(f), 1038(j)

Assembly Bill 744

The Forest Fire Prevention Pilot Project Exemption became statute through Assembly Bill (AB) 744. There have been 9 Pilot Project exemption notices accepted through December 6, 2015, consisting of 1,470 acres.

## **Emergency Regulations Adopted and Implemented During 2015**

### **Drought Mortality Amendments, 2015**

14 CCR §§ 1038, 1052.1

This emergency rulemaking was developed, adopted, and implemented in 2015 in response to the severe tree mortality in California, especially in the Southern Forest District, due the severe drought conditions and beetle infestation. The emergency regulations authorized a new exemption for timber harvesting activity to remove dead and dying trees under 14 CCR § 1038(k), and included drought as a new condition that constitutes an emergency under 14 CCR § 1052.1(b) pursuant to 14 CCR § 895.1.

- The emergency regulation was enacted on July 13, 2015, and will expire on January 12, 2016. As of December 6, 2015, there have been 166 exemption notices accepted consisting of 42,618 acres.
- The Department shall continue to monitor and has reported to the Board on the statewide use of the exemption allowed under 14 CCR § 1038(k), including the number of harvest area acres, the areas of application and the degree of compliance.

### **Protection of Habitable Structure Exemption, 2015**

14 CCR §§ 895.1, 1038, 1038.2

This emergency rulemaking action implemented Assembly Bill (AB) 1867 and exempts persons from the necessity of a timber harvesting plan pursuant of PRC § 4581 when they are engaged in the cutting or removal of trees that are between 150 and 300 feet of an approved and legally permitted habitable structure in compliance with Public Resources Code (PRC) sections 4290 and 4291.

- The emergency regulation was enacted on June 22, 2015 and will expire on December 21, 2015. There have been 9 Protection of Habitable Structure exemption notices accepted through December 6, 2015 to treat 27 acres.
- The Board adopted similar permanent rule language as the Protection of Habitable Structure Exemption, 2015, which was approved by OAL on November



3, 2015, and will be effective on January 1, 2016, with an expiration date of January 1, 2019.

- The Department shall evaluate the effects of the exemption allowed under 14 CCR 1038(c)(6) including frequency and state-wide distribution of use, acres treated, compliance, professional judgment regarding post-treatment stand conditions observed relative to moderating fire behavior and actual performance in the event of a wildfire. The Department shall report annually to the Board its findings based on this evaluation.

### **Water Drafting Emergency Regulations, 2015**

14 CCR §§ 916.2 [936.2, 956.2]

This emergency rulemaking action created subdivision 14 CCR §§ 916.2(d) [936.2(d), 956.2(d)] amending Protection of the Beneficial Uses of Water and Riparian Functions for water drafting activities. These emergency regulations were the readoption of the emergency rulemaking action taken during 2014, for the severe drought condition throughout the State.

- The emergency regulation became effective on September 4, 2015, and will expire on March 2, 2016.
- There are no known significant problems associated with plan submittal and/or implementation of the emergency regulation.

### **Statutory Changes For 2015**

In addition to the rules adopted by the Board, nine (9) bills have been revised or added sections to portions of the Z'berg-Nejedly Forest Practice Act, which were:

#### **Assembly Bill (AB) 1867**

Public Resources Code (PRC) § 4584,

This bill amended PRC § 4584 subsection (i), by adding paragraph (6). This statute extends the Fire Safe Exemption for an area between 150 and 300 feet. The bill included language directing the board to adopt regulations to implement this paragraph no later than January 1, 2016. This paragraph shall become inoperative three years after the effective date of regulations adopted by the board pursuant to subparagraph (D) but no later than January 1, 2019.

#### **Assembly Bill (AB) 2031**

Public Resources Code (PRC) § 4629.5

This statute revised AB 1492 PRC § 4629.5, which became law on January 1, 2015, superseding the revised PRC § 4629.5 included in Senate Bill (SB) 861 that took effect on June 20, 2014.

**Assembly Bill (AB) 2082**

Public Resources Code (PRC) § 4561.2

This statute created PRC § 4561.2, which allows the Board to adopt alternative stocking standards to meet the purposes of the Resource Conservation Standards.

**Assembly Bill (AB) 2112**

Public Resources Code (PRC) § 4590

This statute amended PRC § 4590 to clearly state that the effective period of a timber harvesting plan may be extended if the notice of extension is provided to the department not sooner than 140 days, but at least 10 days, prior to the expiration date of the plan.

**Assembly Bill (AB) 2142**

Public Resources Code (PRC) § 4584.1

This statute created PRC § 4584.1 that added the four coastal counties of Del Norte, Humboldt, Mendocino, and Sonoma to be included for a Forest Fire Prevention Pilot Project Exemption. This was an urgency statute that was effective upon the Governor's signature and this provision was included in the FFP Pilot Project rule package that the Board adopted.

**Assembly Bill (AB) 2239**

Public Resources Code (PRC) §§ 4593.10, 4597.9

This statute amended PRC §§ 4593.10 and 4597.9 regarding the noticing requirements of a change of ownership for a Nonindustrial Timber Management Plan (NTMP), and a Working Forest Management Plan (WFMP).

**Senate Bill (SB) 861**

Public Resources Code (PRC) §§ 4629.5, 4629.6, 4629.7, 4629.8

This statute was a trailer bill that took effect immediately on June 20, 2014 relating to the budget and revised AB 1492 statute under PRC Sections 4629.5, 4629.6, 4629.7, and 4629.8 regarding fee collections and funds.

**Senate Bill (SB) 862**

Public Resources Code (PRC) §§ 4629.5,

This statute created Article 7.8 for the Program Timberland Environmental Impact Report (PTEIR) for carbon sequestration and fuel reduction program. The statute authorizes the Board to promulgate regulations as necessary to facilitate this program, which the Board may adopt as emergency regulations.

## **Senate Bill (SB) 1345**

Public Resources Code (PRC) § 4597.22

This statute amended PRC § 4597.22 to clearly state that Article 7.7 for the WFMP does not apply to the Southern Subdistrict of the Coast Forest Practice District.

### **Suggested Non-Substantive Corrections**

#### **1. 14 CCR § 895.1 Definitions**

##### **Cutover Land**

AB 1414 amended numerous sections of the Forest Practice Act, all of which were non-substantive. This included the elimination of the definition of “cutover land” contained in PRC § 4522.5. Cutover land is defined in 14 CCR § 895.1 as “Cutover Land see PRC 4522.5.”

#### **2. 14 CCR §§ 912.5, 932.5, 952.5 Procedure for Estimating Surface Soil Erosion Hazard Rating**

These rule sections contain an incomplete name for the Board and out-dated address information.

#### **3. 14 CCR § 914.1(d) [934.1(d), 954.1(d)] - Felling Practices**

This rule section mentions conformance with 14 CCR § 914.4 [934.4, 954.4] with regards to nest sites, whereas it should mention 14 CCR § 919.2 [939.2, 959.2].

#### **4. 14 CCR § 916.5(e) [936.5(e), 956.5(e)] - Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures**

This rule section describes protection measures that apply to classified watercourses. Protection measure “D” still mentions “watersheds with threatened or impaired values,” whereas it should mention watersheds with listed anadromous salmonids.

#### **5. 14 CCR § 916.9(v)(7)(A) [936.9(v)(7)(A), 956.9(v)(7)(A)] - Site-specific measures or nonstandard operational provisions**

This rule section mentions the California Administrative Code, which is now called the California Code of Regulations.

#### **6. 14 CCR § 921.1 - Preliminary Field Work and Timber Harvesting Plans**

This rule section refers to the outdated California Administrative Code twice.

**7. 14 CCR § 926.21 Exemptions From Timber Harvesting Plan Requirements [Santa Cruz County]**

This section applies to an obsolete 14 CCR § 1038(c), which was deleted by the Board and replaced with the “Fire Safe Exemption” effective 7/1/2000.

**8. 14 CCR § 953.9 - Successive Cutting**

This rule section cites an outdated rule—14 CAC § 1076—relative to a report of satisfactory stocking. The correct reference should be 14 CCR § 1075.

**9. 14 CCR § 1020 - Board Authority Delegated**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**10. 14 CCR § 1024.5 - Insurance Maintenance**

This rule section refers to a specific section of the Public Resources Code, but fails to state the code name. It merely states “subsection (c) of section 4572.”

**11. 14 CCR §§ 1037.3(a) - Agency and Public Review, 1037.5(a) - Review Teams to be Established, 1090.17(a) - Agency and Public Review for the NTMP, 1092.16 - PTHP Review Inspection-Filing Return, 1092.18 - Agency and Public Review for the PTHP, 1092.27 - Report Minor Deviations**

All of these rule sections mention the Department of Conservation, Division of Mines and Geology, which is now known as the California Geological Survey.

**12. 14 CCR § 1051.1(c) - Contents of Modified THP**

This rule section needs an additional word in order to make the sentence grammatically correct. “[A]nd that the preparations” needs to be changed to “and that in the preparation.”

**13. 14 CCR § 1051.5(e)(3) - Contents of Modified THP for Fuel Hazard Reduction**

This rule section contains out-dated address information.

**14. 14 CCR § 1052.3(b) - Emergency Notice For Insect Damaged Timberlands**

This rule section allows for a 60-day extension of an existing emergency notice. The rule section was made invalid by changes operative 1-1-98, Register 97, Number 48, to Section 1052.

**15. 14 CCR § 1054.3 - Filing of Request for Hearing**

This rule section contains an incomplete name for the Board and out-dated address information.

**16.14 CCR §1055(a) - County Appeals Procedures**

This rule section contains out-dated address information.

**17.14 CCR § 1055.2 - County Appeal Hearing Procedures-Scheduling**

This rule section contains a reference to the outdated CAC and to a rule section that has been re-numbered. 14 CCR § 1055.8 was renumbered to 1055.3 operative on 10-27-90.

**18.14 CCR § 1056(a) - Head of Agency Appeals Procedure**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**19.14 CCR § 1056.1 - Hearing on Head of Agency Appeal**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**20.14 CCR § 1080 - Substantially Damaged Timberlands**

This rule section was re-numbered to 14 CCR § 895.1 in 2000, so it is no longer needed.

**21.14 CCR § 1090.10(d) - Registered Professional Forester Responsibility**

This rule section is missing several words. CAL FIRE currently uses the following bracketed words to provide the correct context: “The RPF preparing the Notice shall, in writing, inform the plan submitter(s) of their responsibility pursuant to Section [1090.9] of [this] Article [6.5] for compliance with the requirements of the Act and, where applicable, Board rules regarding site preparation, stocking, and maintenance of roads, landings, and erosion control facilities.”

**22.14 CCR § 1100(e), (f), and (m) - Definitions**

These definitions related to timberland conversions all mention sections of the Government Code that do not exist. The Board should amend each of these definitions to mention the correct code sections.

## **Rule-Related Issues from CAL FIRE's Past Reports**

CAL FIRE presented the following rule-related issues to the Committee in 2007, 2008, 2009, 2010 and 2011. These issues have been provided to the Committee to summarize CAL FIRE's on-going concerns.

### **Substantive Rule Issues**

#### **23. 14 CCR § 895.1 - Crop of Trees, Available for, and Capable of** [First reported in 2008.]

The PRC § 4526 defines timberland as land "...which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products..." The Board has defined a crop of trees, as any number of trees [emphasis added] that can be harvested commercially. The current rules do not define what kind of land is available for, and capable of, growing a crop of trees. As currently defined, in combination with the Board's definition of crop of trees, timberland is any land that can support even a single specimen from the list of commercial species. Therefore, timber operations include the removal for commercial purposes of any solid wood forest product from any land where a commercial species is capable of growing, regardless of whether that species exists on-site at the time, or whether any commercial species is proposed for harvest. This broad application of the statute and regulations has led to increasing instances of CAL FIRE oversight of operations that would not otherwise be considered forest management for timber production, such as hazard tree removal and fuel hazard reduction projects. Regulating these operations reduces CAL FIRE's ability to provide active inspections on those operations that have a higher likelihood of causing significant environmental damage. Other requirements, such as obtaining the services of an RPF and a licensed timber operator may reduce a landowner's ability to complete these projects in a cost-effective manner. The Board should consider amendments to 14 CCR § 895.1 that revise the definition of a crop of trees, define what "available for and capable of" mean in the context of the definition of timber operations, or both. The Board's Policy Committee had been discussing this matter as it relates to timberland conversions.

Another option would be for the Board to develop its own legislative proposal to address this issue.

#### **24. 14 CCR §§ 895.1 and 919.9(c)(1) [939.9(c)(1)] – Activity Center Definition and Northern Spotted Owl** [First reported in 2011.]

The definition of "activity center" in 14 CCR § 895.1 and the rule language pertaining to take avoidance in 14 CCR § 919.9(c)(1) [939.9(c)(1)] reference the U. S. Fish and Wildlife Service's (USFWS's) Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls revised March 17, 1992 (1992 Survey Protocols). The 1992 Survey Protocols have been superseded by the 2011

survey protocols. CAL FIRE recommends the use of these survey protocols and adherence to the transition guidance, since they are designed to account for the barred owl's presence on the landscape. In addition, the current definition of "activity center" includes the term, "unoccupied status," which USFWS does not recognize as a valid status for an activity center in the 2011 survey protocols. Due to the use of the new survey protocols and the lack of recognition of "unoccupied status," CAL FIRE recommends re-examination of the northern spotted owl rules as they relate to survey methodology and protocols. At a minimum, the Board should consider revising the existing rules by changing the language to require use of the most current, USFWS-approved survey protocols or USFWS approved modification to the current survey protocols. CAL FIRE notes that the Board has begun discussions of this issue.

**25.14 CCR § 913.11(a) [933.11(a), 953.11(a)] – Option A Standards for Maximum Sustained Production of High Quality Timber Products (MSP) Demonstration**  
[First Reported in 2008.]

This subsection provides for the demonstration of MSP as explained in the THP for an ownership, within an assessment area set by the timber or timberland owner. The demonstration of MSP involves producing landowner-specified timber products while accounting for certain constraints, balancing growth and harvest over time, maintaining adequate site occupancy, and making provisions for adequate regeneration. This type of MSP demonstration has, for the most part, supplanted the Sustained Timber Production Assessment contained in a sustained yield plan (SYP) for large industrial ownerships. However, given the large areas covered under such MSP demonstrations and their potential complexity in terms of application, the rule provides very little in the way of explanation as to the contents, filing guidelines, review timelines, effective period, relation to an individual THP, inventory standards, monitoring, and reporting of such demonstrations. Whereas the rules pertaining to the SYP contain specific sections that address the SYP's relation to THPs, SYP Contents, Sustained Timber Production Assessment, Compliance and Effectiveness Evaluation, SYP Effective Period, Review of Sustained Yield Plan, and Timber Harvest Plans Submitted Within a SYP Management Unit, no such rule sections exist for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. Recognizing the scope and complexity of the SYP, the Board formulated thorough rules that were commensurate with the potential area of application and the complexity of content. The same was not done for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. It is clear that the original intent of the Board to allow for MSP Option A demonstrations on an individual THP has been supplanted with a much broader application. Given its broad use and application, the Board should consider forming a technical working group to begin to consider changes to this existing MSP rule to provide more concrete standards for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)].

**26. 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] and 14 CCR § 1034(x)(7) – Location of Class III Watercourse Crossings** [First reported in 2008.]

The rules state in part:

**14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]** The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection.

**14 CCR § 1034(x)(7)** [On a plan map, show the] location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.

14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires the RPF to either clearly describe the location of heavy equipment operations in the Class III equipment limitation zone (ELZ) or to flag or otherwise identify such areas on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. While acknowledging that mapping is not the only way of clearly describing a location of heavy equipment operations, these two subsections are in conflict. One requires the clear description of heavy equipment operations in the Class III ELZ, which would include all watercourse crossings, and could be done by mapping such locations. The other rule requires the mapping of watercourse crossings, but not all of them. This rule conflict has caused confusion with both RPFs and plan reviewers. Given the conflict in the two rule requirements, CAL FIRE has taken the position that when an RPF chooses to describe the location of heavy equipment operations in the Class III ELZ by mapping, he or she must map all such locations, including all classified watercourse crossings, whether they will be flowing water during timber operations or not. To ensure consistency between these two rules, CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7) that Class III crossings that are dry at the time of use not be mapped.

**a. 14 CCR § 916.8 [936.8, 956.8] – Sensitive Watersheds** [First reported in 2008.]

This rule section allows the Board to determine whether nominated planning watersheds are sensitive to further timber operations, and, if so, then identify the specific resources that are sensitive and specific mitigation measures that will provide the necessary protection. This rule has been in effect since 1994, and CAL FIRE is not aware of a nominated watershed ever having been classified as sensitive by the Board. The current rules contain ample provisions to ensure that specific mitigation measures are incorporated into plans to protect any identified sensitive resources. Furthermore, the Regional Water Quality Control Boards have separate authority under the Porter-Cologne Water Quality Act through their waste discharge requirements and waiver process to address specific water quality



resources that are threatened. Due to the lack of use of this rule section and to adequate provisions contained in current laws and regulations, CAL FIRE recommends the Board evaluate the need for this rule section.

**b. 14 CCR § 916.9(s) [936.9(s), 956.9(s)] – Watercourse and Lake Protection Zone (WLPZ) Operations Under an Exemption** [First reported in 2008.]

The rules state in part:

No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under exemption notices except for...

This subsection should be considered in the context of 14 CCR § 1104.1(a)(2)(F), which allows conversion activities in the WLPZ where specifically approved by local permit. There are parcels where the construction area is within the WLPZ, and the county does the CEQA review and issues permits for the house site. It seems appropriate for CAL FIRE to be able to defer to the county in these situations. In addition, the Board should also consider how the restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There currently appears to be a conflict between 14 CCR § 916.9(s) [936.9(s), 956.9(s)] and PRC § 4291 and 14 CCR § 1299. The Board should amend this subsection to resolve these conflicts.

**c. 14 CCR § 926.9(b) - Hours of Work** [First reported in 2012.]

The Board adopted regulations that became effective in 2012 to allow timber operations on the nationally observed Columbus Day holiday state-wide in counties that heretofore had prohibited it. CAL FIRE notes that 14 CCR § 926.9(b) still restricts timber operations to certain hours within Santa Cruz County on nationally designated legal holidays, such as Columbus Day. This rule section should be amended to be consistent with others county rules that allow timber operations on Columbus Day.

**d. 14 CCR § 1032 - Timber Harvesting Plan Filing Locations** [First reported in 2011.]

With the recent decline in the number of timber harvesting plans submitted, the greater number of plans located in Northern California, and continued improvements in the electronic storage and retrieval of timber harvesting plans, CAL FIRE believes it may be unnecessary to maintain three separate plan filing locations. In 2008 CAL FIRE recommended changes to the rules that decreased filing locations from four to three by removing Riverside as a plan filing location. The Board adopted this change, and every plan filed in the Southern Forest District is now sent to CAL FIRE's Fresno office. One Forest Practice Manager currently oversees operations in

the Fresno and Redding Review Team Offices, whereas two Forest Practice Managers formerly managed those offices. In an effort to make plan review more efficient, CAL FIRE has discussed further consolidation of review team functions at fewer locations. This could involve one or two locations handling current review team functions. Any such administrative change on the part of CAL FIRE would be facilitated by a change in 14 CCR § 1032 in terms of plan filing locations. It also is possible that in the near future it will be more cost effective and efficient to conduct second review of plans in only the regional offices. Presently, the second review team meetings for Coast Forest District plans are conducted in Fortuna, Howard Forest, and Santa Rosa. CAL FIRE will keep the Board informed of any decisions it makes relative to consolidation of review team functions.

**e. 14 CCR § 1032.7(d) – Describing the Area of Operations** [First reported in 2008.]

The rules state in part:

A Notice of Intent [NOI] shall include the following information: **(4)** The acres proposed to be harvested. **(5)** The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which this will occur. In order to make the NOI more applicable to the logging area and inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the Board consider amending the following paragraphs:

- 14 CCR § 1032.7(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.
- 14 CCR § 1032.7(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

**f. 14 CCR § 1032.10 – Domestic Water Notification** [First reported in 2008.]

The rules state in part:

The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done.

This rule section has presented problems in interpretation, which should be clarified. The following are areas where CAL FIRE has had questions regarding this section during plan review:

- The code section requires notifying downstream landowners whose property receives surface drainage from the proposed timber operations. There has been some debate among CAL FIRE plan review staff as to what constitutes surface drainage. Is it overland flow or does it only occur in the channel of a watercourse or obvious flow from a spring seep?
- Publication may need to be given in a newspaper of general circulation in the area affected by the proposed project. CAL FIRE assumes this requires notification in a newspaper of general circulation as defined in Government Code §§ 6000-6027.
- A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].
- CAL FIRE often receives harvesting documents where notification of downstream landowners was done more than a year prior to plan submittal. It seems reasonable and practical to require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.

- CAL FIRE staff has questioned whether a harvesting plan has to be returned in cases where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. This question arises because the rule requires at least ten days to pass after notification before submission of the plan.
- The 4<sup>th</sup> sentence should be changed to use the proper verb, “affect,” in place of “effect.”

**g. 14 CCR § 1034 - Contents of Plan** [First reported in 2008.]

Changes to the contents of plan section can be made to better facilitate this rule section’s functionality. These are:

- **14 CCR § 1034(r)** [The plan shall contain the following information:] How the requirements of 14 CCR § 1032.7(f) are to be met.

The reference to 14 CCR § 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.

- **14 CCR § 1034(x)(7)** [On a plan map, show the] location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.

The mapping of watercourse crossings required by this paragraph needs to be reconciled with the requirement to clearly describe the location of heavy equipment operations in the Class III ELZ per 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]. This has been previously discussed.

- **14 CR § 1034(x)(9)** [On a plan map, show the] location of all watercourses with Class I, II, III, or IV waters.

To ensure all waters are provided with adequate protection, this paragraph should be amended to add “and lakes.”

- **14 CCR § 1034(ii)** On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown.

This subsection should be deleted and the mapping requirement should be incorporated as part of 14 CCR § 1034(x), which applies strictly to mapping.

Finally, the contents of plan section provides the closest thing in the rules to a list of what has to be contained in a plan in order for CAL FIRE to file it upon completion of first review. Thus, the contents of plan section is very important to the RPF preparing a plan and CAL FIRE plan review staff. There are numerous

other items that a plan must include scattered throughout the rules, but the contents of plan section is the place where the highest concentration of such required information is located. The Board should consider amending 14 CCR § 1034 at the same time it adopts or amends any rule that adds anything that could be considered a required portion of a harvesting plan. This may lead to redundant rules, but it would ensure a central location where the plan preparing RPF could be assured of finding what is considered essential information in a harvesting document. Possible alternatives are to provide cross references to the various plan content requirements scattered throughout the rules in this rule section or to create an index providing such cross reference information. Also, the Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

**h. Technical Rule Addendum No. 4, Minimum Distances Required by Law, Fire Safe THP Vegetation Treatment** [First reported in 2008.]

This diagram of required defensible space, which is provided in the exemption section of the rules, does not show the 30-to-100 foot zone around structures wherein fuels treatment are required per PRC § 4291(b) and 14 CCR § 1299(a)(2). The Board should amend this technical rule addendum to be consistent with existing defensible space requirements under the Forest Practice Act.

**i. 14 CCR § 1054.8 - Order of the Board** [First reported in 2008.]

The rules state in part:

Following the public hearing, the Board shall determine whether, upon the record before it, the plan is in conformance with the rules and regulations of the Board and the provisions of the Act. If the Board determines that the plan is in conformance with the rules and regulations of the Board and the provisions of the Act, it shall make its order approving the plan. If the Board determines that the plan is not in conformance with the regulations of the Board and the provisions of the Act, it shall make its order disapproving the plan. Approval of the plan by the Board constitutes authorization that timber operations may commence and be conducted in accordance with the plan as approved and in accordance with the rules and regulations of the Board and the provisions of the Act. Timber operations shall not take place where the Board disapproves the plan. Disapproval of a plan shall be without prejudice to the applicant submitting a plan at any later time complying with the rules and regulations of the Board and the provisions of the Act. Where the Board approves the plan, notice thereof shall be filed with the Secretary of Resources, and within 10 working days such notice shall be transmitted to the agencies and persons referred to in 14 CCR 1037.3, and for posting at the places referred to in Section 1037.1. The order of approval shall include written response to significant environmental points raised during the evaluation process.

The process and timelines described in this rule section are not consistent with the process and timelines outlined in PRC § 4582.7(d) and 14 CCR § 1037.6 regarding disapproval of the plan by the Board and the provision for bringing the plan into conformance. In addition, neither this section nor PRC § 4582.7(d) are consistent with the CEQA guidelines and current case law regarding re-circulation of plans with significant new information. The Board should consider amending this rule section to make it consistent with statute and code regarding the current plan review process and timelines.

**j. 14 CCR § 1092.04(d) – Information Under a Notice of Intent to Harvest Timber** [First reported in 2008.]

The rules state in part:

**14 CCR § 1092.04(d)** A Notice of Intent shall include the following information:

- (4)** The acres proposed to be harvested.
- (5)** The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which they will occur. In order to make the NOI more applicable to the logging area and to be inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the following changes:

- 14 CCR § 1092.04(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.
- 14 CCR § 1092.04(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or fuelbreak.

## **Non-Substantive Rule Issues**

**27. 14 CCR § 895.1 - Fire Protection Zone** [First reported in 2008.]

The rules state in part:

(For the Coast and the Southern Forest District:) means that portion of the logging area within 100 feet (30.48 m) as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads; and within 200 feet (60.96 m) as measured along the surface of the ground, from permanently located structures currently maintained for human habitation. **Fire Protection Zone** (For the Northern Forest District:) means that portion of the logging area within 100 ft. (30.48 m), as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads, and 50 ft. (15.24 m) as measured along the surface of the ground from the traveled surface of all private roads, and within 100 ft. (30.48 m), as measured along the surface of the ground, from permanently located structures currently maintained for human habitation (Ref. Sec. [4562], PRC).

The definition “fire protection zone” was deleted from the hazard reduction rules in 1991. At that time, CAL FIRE alerted the Board that it should eliminate the definition:

It is recommended that the definitions, “fire protection zone” and “lopping[,]” found in 14 CCR 912, 932, and 952 be repealed because either they are not used in the hazard reduction rules or they have been changed by the proposed rules.

To which the Board replied:

The Board agrees that the definitions[,] “fire protection zone” and “lopping[,]” have not been used or have been changed by the proposed rules. Accordingly, the definitions for these terms will be repealed or changed in accordance with those set forth in the proposed regulations for the sake of consistency.

The Board has never repealed the definition of fire protection zone. It should do so in order to resolve this matter.

**28. 14 CCR § 914.1(d) [934.1(d), 954.1(d)] – Incorrect Rule Reference** [First reported in 2008.]

The rules state in part:

Felling practices shall conform to requirements of 914.4, 934.4, 954.4 to protect bird nesting sites.

Under 14 CCR § 914.1(d) [934.1(d), 954.1(d)], the rule language references 14 CCR § 914.4 [934.4, 954.4], which does not exist. The correct reference appears to be 14 CCR § 919.2 [939.2, 959.2]. The Board should change this rule section to reference the correct rule.

## **29. 14 CCR §§ 917.9, 937.9, 957.9 - Prevention Practices**

Barclays California Code of Regulations contains a section (14 CCR § 917.10 [937.10, 957.10] Prevention Practices) that was deleted as part of a 1991 rule-making effort. CAL FIRE has addressed this up until now by providing the following note in the Forest Practice Rule book:

NOTE: Barclays official record for sections 917.9 – 917.11, 937.9 – 937.11, and 957.9 – 957.11 were incorrectly changed in 1991, Register 92 Number 13, and should read as follows. This correct language has always been printed by CAL FIRE. The Board, CAL FIRE, Barclays and OAL are working to correct this.

This deleted rule section needs to be removed from Barclays, and 14 CCR § 917.11 [937.11, 957.11] Locating and Reporting needs to be re-numbered to reflect the correct section number of 14 CCR § 917.10 [937.10, 957.10]. The Board should direct staff to work with the Office of Administrative Law to correct this mistake.

## **30. 14 CCR § 923.5(g) [943.5(g),963.5(g)] – Missing Word [First Reported in 2012]**

The rules state:

On slopes greater than 35%, the organic layer of the soil shall substantially removed prior to fill placement.

It would appear that there is a word missing here, which is “be.”

## **31. 14 CCR § 926.3(d) – Incorrect Rule Reference [First reported in 2008.]**

The rules state in part:

The plan submitter shall have the Notice of Intent published in a newspaper of general circulation in the area, concurrently with the submission of the plan to the Director. Proof of publication of notice shall be provided to the Director prior to his/her determination made pursuant to 14 CCR 1037.6.

The reference to 14 CCR § 1037.6 appears to be incorrect, since § 1037.6 describes what to do when a plan does not conform to the rules. The subsection should likely refer to 14 CCR § 1037.4. The Board should amend this subsection to refer to 14 CCR § 1037.4.

## **32. 14 CCR § 1051.4(a)(2) – Incorrect Rule Reference**

This rule contains an incorrect rule reference. The rule reference relative to clearcutting being defined in 14 CCR § 913.2(a) [933.2(a), 953.2(a)] appears in error, since that rule section pertains to the selection silvicultural prescription. The Board should correct this rule reference.



CAL FIRE notes that no modified timber harvesting plans for fuel hazard reduction have been submitted since the rule became effective.

### 33.14 CCR § 1100 – Incorrect Code References [First reported in 2008.]

The rules state in part:

- (e)** "Compatible Use" compatible use as defined in Gov. C. 51100 (h) and 51111, as made specific by county or city ordinance adopted pursuant thereto (Ref.: Sec. 51100 (h) and 51111, Gov. C.).
- (f)** "Contiguous" two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the County Board of Supervisors or City Council, that they are manageable as a single forest unit (Ref.: Section 51100 (b), Government Code.)
- (m)** "Timberland" timberland as defined in PRC 4526, for land outside a TPZ. Timberland as defined in Gov. C. 51100(f), for land within a timberland production zone (Ref.: Sec. 4526, PRC; Sec. 51100(f), Gov. C.).

There are several incorrect code sections quoted herein:

- Under "Compatible Use," the reference to Government Code (GC) § 51100(h) should likely be to GC § 51104(h).
- Under "Contiguous," the reference to GC § 51100(b) should likely be to GC § 51104(b).
- Under "Timberland," the reference to GC § 51100(f) should likely be to GC § 51104(f).